IN THE IOWA DISTRICT COURT FOR POWESHIEK COUNTY

STATE OF IOWA, Plaintiff. v. CRISTHIAN BAHENA RIVERA, Defendant.	NO. FECR010822 STATE'S RESISTANCE TO DEFENDANT'S SUPPLEMENTAL MOTION TO SUPPRESS

INTRODUCTION

1. On August 8, 2019, the Defendant filed a "Supplemental Motion to Suppress." That filing expands on some of the grounds the Defendant previously raised, raises some new grounds, and reiterates many of the same claims without further explanation.

2. For the benefit of the Court, the State is filing a supplemental resistance to appropriately cast the issues that will be heard at the October 22–24 hearing and to adequately set forth the State's position on the legal issues.

3. In order to comprehensively respond to the Defendant's "supplemental" contentions, the State will reiterate some of its prior filings and expand on them where necessary. To that end, this resistance includes some new facts that were not relevant to the arguments the Defendant made previously and reflects additional information unearthed in ongoing discovery.

SUMMARY

Due to the lengthy nature of this resistance and the numerous issues raised by the Defendant, the State offers the following summary regarding the issues raised by the Defendant and the State's positions at the upcoming hearing. All positions and arguments summarized are detailed with support later in this resistance.

ISSUES RAISED BY DEFENDANT'S MOTIONS SUMMARIZED

a. Custody. The Defendant asserts he was in custody from the moment he left the farm and should have been immediately *Mirandized*. *See* Defendant's Suppl. Motion to Suppress, ¶¶4–6.

b. Consent to search the Malibu. The Defendant asserts that his consent to search the Malibu was invalid. The Defendant does not challenge the search warrant that was issued for the Malibu on August 20, 2018.

c. *Miranda*. The Defendant asserts that the *Miranda* waiver at the Sheriff's Office was not effective. *See* Defendant's Suppl. Motion to suppress, ¶¶8–26.

d. Voluntariness. The Defendant claims that his statements were involuntary under the Fifth Amendment to the United States Constitution. *See* Defendant's Motion to Suppress, ¶¶27–34.

e. Iowa Constitution. The Defendant asserts that his rights under Article I, section 10, and Article I, section 9, of the Iowa Constitution were violated. *See* Defendant's Suppl. Motion to Suppress, ¶¶35–39.

f. Iowa Code section 804.20. The Defendant alleges that his statutory right under section 804.20 was violated at the Sheriff's Office. *See* Defendant's Suppl. Motion to Suppress, ¶¶ 40–42.

g. Vienna Convention. The Defendant claims a violation of the Vienna Convention on Consular Relations. *See* Defendant's Suppl. Motion to Suppress, ¶¶43–59.

STATE'S RESPSONSE SUMMARIZED

h. The State resists suppression of any evidence found in the Malibu as consent was valid and there was a valid search warrant issued for the vehicle.

i. The State resists suppression of the statements of the Defendant at the farm and later at the Sheriff's Office up to the point where the first partial *Miranda* warning was read to him – approximately 11:30 p.m. on August 20, 2018. The State resists the assertion the Defendant was in custody until the time he was informed that he was being detained due to his immigration status.

j. The State concedes that the initial *Miranda* warning given to the Defendant at approximately 11:30 p.m. on August 20, 2018, was incomplete in that the officer giving it inadvertently omitted informing the Defendant what he says can be used against him in court at a later time. A second complete *Miranda* warning was read to the Defendant in a vehicle at approximately 5:50 a.m. while at the scene near where

Mollie Tibbetts's body was located. After the second *Miranda* warning, the Defendant knowingly waived his *Miranda* rights and continued to speak with officers. Following this second warning the Defendant made numerous statements that implicate him in Mollie Tibbetts's murder. The State asserts that the statements made following the second *Miranda* warning are admissible.

k. The State believes the Court must suppress those statements made by the Defendant between the first incomplete *Miranda* warning and the second complete *Miranda* warning based upon the omission of the warning that what the Defendant states to police may be used against him in court. The State finds no legal support for inclusion of those statements if the warning that was omitted was not provided to him. By making this concession, the State does not concede the statements made following the incomplete *Miranda* warning are involuntary, coerced, or the product of a false confession. Further, by making this concession, the State reserves the right to use any of the statements made between the first incomplete *Miranda* warning and the second complete *Miranda* warning to rebut or impeach any expert or lay witness testimony that the Defendant's statements were involuntary, coerced, or the product of a false confession.

l. The State takes the position pursuant to *United States v. Patane, 542 U.S. 630, 643 (2004)* that any physical evidence derived from the incomplete statement is still admissible and the "fruit of the poisonous tree" rationale for excluding any such physical evidence as a result of the incomplete *Miranda* warning is inapplicable.

m. The State continues to assert that the body of Mollie Tibbetts would have inevitably been discovered regardless of any statements made or actions taken by the Defendant.

n. The State continues to resist the Defendant's assertions that his statements were involuntary. The State asserts that all of the Defendant's statements to any officer during his entire encounter with law enforcement were voluntary and not coerced.

o. In all other regards, the State resists the Defendant's claims in the Defendant's motions including that his rights were violated pursuant to Iowa Code 804.20 and that his rights were violated under the Vienna Convention.

FACTS

4. The State anticipates calling witnesses at the suppression hearing who will testify substantially in accord with the following synopsis of the facts related to the crime, the interview of the Defendant, and the collection of certain physical evidence.

Mollie Tibbetts disappears. A black Malibu repeatedly drove past her one of the last times she was seen on surveillance footage.

5. Mollie Tibbetts went for a run on the evening of July 18, 2018, in Brooklyn, Iowa, and never returned home. She was reported missing the following day. Local, state, and federal law enforcement searched for her in the weeks that followed.

6. During the course of the investigation, law enforcement obtained surveillance footage that showed one jogger traveling northbound on Boundary Street. Witnesses confirmed to police that Mollie was jogging in this area at that approximate time and that this area matched a route Mollie was known to take. No other jogger was seen in that area during that time.

7. On this same surveillance footage, a black Chevy Malibu with several distinct characteristics was seen multiple times in the minutes after Mollie jogged that route.

A sheriff's deputy had a chance encounter with the black Malibu, driven by the Defendant.

8. Poweshiek County Deputy Sheriff Steve Kivi observed the same black Malibu on August 16, 2018, and followed the vehicle for a period of time. Deputy Kivi did not conduct a traffic stop. Instead, after the driver voluntarily stopped, Deputy Kivi approached the driver, identified himself, and asked a neighbor for assistance interpreting a conversation with the driver.

9. The driver provided identification: Christian Bahena Rivera, the Defendant.

10. Deputy Kivi told the Defendant that he was investigating Mollie's disappearance and asked whether the Defendant knew anything relevant to the

investigation. The Defendant told Deputy Kivi that he did not know anything about Mollie or her disappearance.

Two days later, officers canvassed Yarrabee Farms and searched for the Malibu. They found both the Malibu and the Defendant.

11. On August 20, 2018—two days after the encounter with Deputy Kivi and a little over a month after Mollie disappeared—law enforcement contacted the Defendant at Yarrabee Farms, where he worked as a laborer. Officers went to the farm to conduct a canvass of the employees and to make contact with the Defendant and look for the black Malibu.

12. Officers learned that the Defendant had not driven the black Malibu to the farm that day, but instead had driven a Nissan Altima registered to his girlfriend.

13. The Malibu was located at the Defendant's residence on the Yarrabee Farms property.

14. The Defendant consented to a search of both the Malibu and the Altima. Officers obtained both written and verbal consent from the Defendant, in Spanish.

15. The written consent form specifically advised the Defendant, in Spanish, that he could refuse to consent to the search.

16. The State Crime Lab performed DNA analysis on the Malibu and found suspected blood on the inside seal of the Malibu's trunk and on a liner inside the trunk. Subsequent forensic analysis confirmed the presence of blood. The DNA profile of Mollie Tibbetts was found on the trunk seal and inside that trunk on a liner.

The Defendant voluntarily agreed to an interview at the Poweshiek County Sheriff's Office.

17. At the farm, officers spoke with the Defendant in Spanish through an interpreter employed by the Department of Homeland Security as an Immigration and Customs Enforcement (ICE) officer. The interpreter was a proficient Spanish speaker. There was no significant language barrier and both parties were able to understand each other.

18. Officers explained to the Defendant that a professional interpreter was available at the Sheriff's Office. They asked the Defendant whether it was possible he

"could come with us to talk … about some other questions" at the Poweshiek County Sheriff's Office.

19. The Defendant responded, "Yeah."

20. Because both vehicles associated with the Defendant were being searched, the police offered to drive the Defendant to the Sheriff's Office and then bring him back to the farm when they were done.

21. The Defendant responded, "Oh, okay … no problem."

22. Officers confirmed the Defendant was voluntarily accompanying them by asking, "So, there's no problem with that?" and the Defendant responded, "Yes," as long as it was okay with his boss.

23. Before they left the farm, the Defendant asked officers if he could change his shoes. Officers responded affirmatively and told the Defendant that he could get anything he needs (like keys or medication), and that they could wait for him if he needed to "wrap up anything."

24. Special Agent Scott Green with the Division of Criminal Investigation drove the Defendant to the station. The Defendant sat in the front passenger seat of the vehicle. He was not handcuffed or restrained in any way. Agent Green and the Defendant made small talk in the car about the weather while driving to the Sheriff's Office. The drive to the Poweshiek County Sheriff's Office was approximately 20 minutes. Green and the Defendant arrived at approximately 3:35 p.m.

25. At the Sheriff's Office, the Defendant was directed to the public lobby. He was treated as a visitor, rather than an arrestee.

26. Special Agent Trent Vileta, also with the DCI, briefly introduced himself to the Defendant in the lobby.

27. The Defendant remained in the lobby—alone, unrestrained, unguarded, and unsupervised—for more than an hour before the interview began.

28. During this entire time, the Defendant had access to public entrances and exits from the lobby. The Defendant also had his cell phone.

29. Despite ample opportunity to leave the Sheriff's Office, call a friend or family member, or otherwise decline to participate, the Defendant voluntarily spoke with officers in one of the interview rooms.

That evening, Spanish-speaking officers interviewed the Defendant.

30. A few different officers interviewed the Defendant over the course of that evening.

31. The lead interviewer was Iowa City Police Officer Pamela Romero, whose native language is Spanish. Officer Romero speaks both Spanish and English fluently. While speaking to the Defendant, she used Spanish.

32. Iowa City Police Officer Jeff Fink also participated in the interview, in Spanish.

33. Other state and federal law enforcement officers spoke briefly with the Defendant, either in Spanish or through Romero or Fink interpreting.

34. From the recording and the recollection of the officers, there were no comprehension issues between the Defendant and the interviewers: the Defendant did not say he was having trouble understanding or comprehending what was going on, he tracked the conversation appropriately, and he appeared cognitively normal.

The interview stretched into the next morning, but involved breaks, food, and numerous opportunities for the Defendant to leave.

35. Although the total time from the first interview question (5:05 p.m.) to the last question (4:15 a.m.) stretched 11 hours, the interview was not continuous or arduous, and it was not predominantly hostile.

36. Officers took 10 breaks over the course of the interview.

37. The longest break was almost 30 minutes. During this time, the Defendant was provided a meal, which he consumed without interruption by any law enforcement officer.

38. The longest period of questioning was approximately 1 hour and 20 minutes, during the first two hours of the interview.

39. In total, the Defendant spoke to officers for approximately 8 hours and 30 minutes out of the total 11 hours and 10 minutes that he was in the interview room.

40. Throughout this time, the Defendant was provided access to food, drink, and restrooms.

41. The Defendant turned down the offer of food or water more than once.

42. Throughout the entire interview, until *Miranda* warnings were read at approximately 11:30 p.m., the Defendant had unrestricted access to his cell phone, and in fact did use that cell phone on multiple occasions.

The interview was not custodial until the federal government placed an immigration detainer on the Defendant.

43. Officers did not read the Defendant *Miranda* warnings at the start of the interview because the Defendant was free to leave and not in custody.

44. The first interaction Officers Romero and Fink had with the Defendant was them pointing out the exit that leads immediately to the street, explaining that the door opens from the inside and was not locked, and telling the Defendant that, "If, at any moment, you want to leave or you don't want to talk … you can get up and you're free to go."

45. Soon after, Officer Romero told the Defendant that she saw he had his cell phone and that "[w]henever you want to use it or communicate with someone, that's fine."

46. The Defendant made some admissions during this non-custodial portion of the interview. For example, he admitted that Mollie said "hi" to him during the four or more times he passed her and circled his car back to her location. He also told Officer Romero that he thought Mollie "was hot."

47. The Defendant's admissions were consistent with the surveillance footage. Specifically, he admitted that he was in proximity to Mollie when she was jogging.

48. Shortly before 11:30 p.m., federal agent Mike Fischels spoke to the Defendant on the phone and determined that the Defendant was suspected of being in the United States unlawfully. Federal authorities placed an immigration detainer on the Defendant, which prevented him from leaving the Sheriff's Office.

Once the Defendant was no longer free to go, police attempted to read the Defendant full Miranda *warnings, but accidentally omitted one sentence.*

49. As a result of the immigration detainer, the interview became custodial at approximately 11:30 p.m.

50. Officer Romero attempted to provide *Miranda* warnings to the Defendant at that time.

51. Unfortunately, Officer Romero—who did not have access to a *Miranda* card and instead gave the warnings extemporaneously—did not warn the Defendant that anything he said could be used against him in court. The warnings were otherwise complete and adequate.

52. The Defendant told Officer Romero that, despite the nearly-complete warnings she provided (that he did not have to talk to her, that he had the right to a lawyer, and that if he could not afford a lawyer, one would be appointed for him), he still wished to continue speaking with her.

The Defendant, throughout the interview, made numerous incriminating statements.

53. After midnight, the Defendant's story gradually shifted from a denial of killing Mollie to a claim that he "didn't remember" doing anything to her.

54. He claimed to Officer Romero that he had a "problem" where he blacks out or "can't remember" what he did. He said that, "[W]hen I get mad, it's like ... like, I'm another person." At one point, he blamed his memory problems on hitting his head on a goal post while playing soccer in Mexico.

55. The Defendant's story soon shifted again, in response to non-confrontational questioning by Romero, and he said that it was "possible" that he did something violent to Mollie he didn't remember.

56. Eventually, the Defendant admitted to getting a vacuum to clean his car after Mollie disappeared, presumably in an attempt to destroy evidence. He also admitted that, on the night of Mollie's murder, he found himself in Malcom, Iowa, at 4:00 a.m., on a gravel road.

57. Near the end of the interview, the Defendant asked to speak to Officer Romero alone (without any other officers present). The other officers left the room and the Defendant made additional admissions.

58. He specifically admitted to "fighting" with Mollie, that he put her in his car, and that there was blood. He told Officer Romero that he "can't say if she [Mollie] was dead or alive" at that point.

59. He told Officer Romero, "I remember that we were in the corn … I remember that's where I put her."

Following the interview, the Defendant led police to Mollie's body.

60. The Defendant was asked if he would be willing to lead officers to Mollie's body and he agreed.

61. The Defendant first described the location where he disposed of Mollie's body, then navigated officers there with essentially turn-by-turn directions.

62. The officers began by driving the Defendant to Yarrabee farms, so that he could utilize familiar landmarks for navigation.

63. Specifically, the Defendant led officers directly to a cornfield in rural Poweshiek County, where Mollie's body was found.

64. Police recovered Mollie's body, which was eventually autopsied.

*Officer Romero re-*Mirandized *the Defendant in the car, after officers started moving toward Mollie's body.*

65. As some law enforcement officers moved toward Mollie's body, the Defendant continued to speak with others.

66. Eventually, the Defendant and Officer Romero went back toward the police vehicle they had arrived in.

67. When they returned to the vehicle, Officer Romero reminded the Defendant that she had previously read him *Miranda* warnings, and explained that she was going to do so a second time. Romero will testify that she read the warnings a second time because there had been a break in the conversation when they left the Sheriff's Office to locate the body.

68. The second set of warnings Officer Romero read to the Defendant were complete. This time, she did read the complete warning related to use of the Defendant's statements in court.

69. After being adequately warned, the Defendant told Officer Romero that he had seen Mollie jogging, that he followed her, that he exited his vehicle, and jogged beside her before eventually confronting her. The Defendant said that, during this confrontation, Mollie threatened to call the police. The Defendant told Romero that he remembered this made him angry, that he was with Mollie near the cornfield, that he covered Mollie with corn, and that there was blood on her head and on her body.

70. Among other statements, the Defendant also specifically told Officer Romero that he remembered there was dried blood on Mollie's body when he was carrying her, and that she was not fighting back at that point.

71. Despite providing significant details surrounding the murder, the Defendant still refused to answer certain questions posed by law enforcement, including the exact mechanism of Mollie's death. The Defendant claimed not to remember.

In the approximate year since his arrest, the Defendant has repeatedly demonstrated that he can speak both Spanish and English fluently.

72. Since his arrest on August 21, 2018, the Defendant has been housed in the Poweshiek County Jail.

73. Jail staff have interacted with the Defendant on a daily basis.

74. The Defendant is able to interact with jail staff effectively in both English and Spanish.

75. When jail staff who do not speak Spanish speak with the Defendant, the Defendant is able to understand the conversation in English and appropriately respond in English.

76. This is consistent with other statements made by the Defendant during the August 2018 interview, including when he told Officer Romero that he had been successfully employed in the United States by English-speaking business owners for several years.

77. Ben Anderson, the jailer who was primary responsibility for interacting with the Defendant, will testify as a witness at the suppression hearing. Anderson does not speak Spanish.

LEGAL ISSUES PRESENTED

78. As summarized earlier in this resistance, the State understands the Defendant to raise the following distinct claims:

a. Custody. The Defendant asserts he was in custody from the moment he left the farm and should have been immediately *Mirandized*. *See* Defendant's Suppl. Motion to Suppress, ¶¶4–6.

b. Consent to search the Malibu. The Defendant asserts that his consent to search the Malibu was invalid. The Defendant does not challenge the search warrant that was issued for the Malibu on August 20, 2018.

c. *Miranda*. The Defendant asserts that the *Miranda* waiver at the Sheriff's Office was not effective. *See* Defendant's Suppl. Motion to suppress, ¶¶8–26.

d. Voluntariness. He claims that his statements were involuntary under the Fifth Amendment to the United States Constitution. *See* Defendant's Motion to Suppress, ¶¶27–34.

e. Iowa Constitution. He asserts that his rights under Article I, section 10, and Article I, section 9, of the Iowa Constitution were violated. *See* Defendant's Suppl. Motion to Suppress, ¶¶35–39.

f. Iowa Code section 804.20. He alleges that his statutory right under section 804.20 was violated at the Sheriff's Office. *See* Defendant's Suppl. Motion to Suppress, ¶¶ 40–42.

g. Vienna Convention. The Defendant claims a violation of the Vienna Convention on Consular Relations. *See* Defendant's Suppl. Motion to Suppress, ¶¶43–59.

79. As discussed below, the Court likely must suppress statements the Defendant made between approximately 11:30 p.m. (when the Defendant was inadvertently given incomplete *Miranda* warnings at the Sheriff's Office) and

approximately 5:50 a.m. (when the Defendant was given a complete set of *Miranda* warnings by Officer Romero in the vehicle near the cornfield).

80. Controlling case law, however, holds that the Court should *not* suppress evidence that Mollie's blood was found in the Defendant's truck, evidence regarding Mollie's body (including the autopsy), or the Defendant's statements made after the second set of warnings at the site where he disposed of Mollie's body.

81. In addition, all of the Defendant's statements—including those made between the two *Miranda* warnings—were voluntary, which means they are admissible as impeaching evidence.

The Defendant gave effective consent to search the black Malibu.

82. As explained in the State's initial resistance, the consent to search the Malibu offered by the Defendant was voluntary and therefore effective. *See* State's Resistance, pp. 6–9.

83. The State need only prove consent was voluntary by a preponderance of the evidence, based on the totality of the circumstances. *See Schneckloth v. Bustamonte*, 412 U.S. 218, 249 (1973); *State v. Garcia*, 461 N.W.2d 460, 462 (Iowa 1990).

84. The totality of the circumstances here demonstrates the consent given by the Defendant was voluntary:

a. The Defendant was approached at his workplace, surrounded by familiar people and at a familiar location.
b. Consent was requested and given in Spanish, through a conversation initiated by officers that identified themselves and spoke calmly and without aggression.
c. After the officers obtained verbal consent, a written consent form (also in Spanish) was completed and signed by the Defendant.
d. After signing the written consent form, the Defendant again told officers (in Spanish) that "they could go inside [the car] and everything," and told them where the keys were.

e. The officers did not brandish weapons, flash badges, or otherwise attempt to exert undue influence based on their status as police officers.

f. Nor did they make any claims about the possibility of obtaining a warrant absent the Defendant's cooperation.

g. The conversation itself was pleasant and the Defendant was cooperative. His statements to the police do not reflect distress, fear, or any inappropriate emotion.

85. At most, the Defendant identifies one arguable factor that he believes weighs against finding consent was voluntary: that the police did not orally tell him that he had the right to refuse to consent to the search. Defendant's Initial Motion to Suppress, ¶7. However, the Defendant omits that the written consent form (which he signed) explained, in Spanish, that he had the right to refuse. The Defendant cites no authority, for there is none, holding that officers must provide information orally rather than in writing to a Defendant who is capable of both hearing and reading information. This complaint is without merit.

86. But, even if officers had not told the Defendant he could refuse, in writing or otherwise, that would be no basis for granting the Defendant relief. Both state and federal constitutional law recognize that the police are not required to tell suspects they can refuse to consent to searches. *Schneckloth*, 412 U.S. at 249 ("[W]hile the subject's knowledge of a right to refuse is a factor to be taken into account, the prosecution is not required to demonstrate such knowledge as a prerequisite to establishing a voluntary consent."); *State v. Pals*, 805 N.W.2d 767, 783 (Iowa 2011) (declining to depart from *Schneckloth*).

87. Also, the validity of the consent was later confirmed by the officers conducting the interview at the Sheriff's Office.

88. The consent search was proper.

89. Law enforcement also obtained a valid search warrant for the Malibu as discussed below beginning in paragraph 151.

The Defendant was not in custody until approximately 11:30 p.m. Miranda *warnings were not required before that point.*

90. As set forth in the facts section above and in the State's initial resistance, the Defendant voluntarily accompanied officers to the Sheriff's Office. *See* State's Resistance, pp. 9–13.

91. *Miranda* warnings were not required until the Defendant was in custody. *See State v. Countryman*, 572 N.W.2d 553, 557 (Iowa 1997).

92. Custody is an objective, rather than subjective, question. *Stansbury v. California*, 511 U.S. 318, 323 (1994). The ultimate inquiry is whether a reasonable person would believe themselves to be arrested or restrained to the degree of a formal arrest. *State v. Scott*, 518 N.W.2d 347, 350 (Iowa 1994); *State v. Deases*, 518 N.W.2d 784, 789 (Iowa 1994).

93. Although the analysis must consider the totality of the circumstances, Iowa courts often organize their assessment of custody around four factors: (1) the language used to summon the individual; (2) the purpose, place, and manner of interview; (3) the extent to which the Defendant is confronted with evidence of guilt; and (4) whether the Defendant is free to leave the location of the interview. *Countryman*, 572 N.W.2d at 558.

94. *State v. Tyler*, 867 N.W.2d 136 (Iowa 2015), is the most recent substantive analysis of custody by the Supreme Court, and it too was organized around the four factors. First, the Court found the Defendant voluntarily accompanied DCI agents from her home to the law enforcement center because officers asked the Defendant if she was "okay" with them transporting her, and she said "yea." *Id.* at 172. Second, officers questioned the Defendant for three hours in an interrogation room, but offered her breaks for food and to use the restroom. *Id.* at 172–73. Third, the interview took place at an early stage in the investigation, and thus officers had little to no evidence with which to confront the Defendant. *Id.* at 173–74. And fourth, the police told the Defendant that, although she had ridden with them to the station, she was free to go at any time, and the doors between her and the exit were unlocked. *Id.* at 174.

The Supreme Court concluded that all four of these factors weighed against custody and the Defendant did not need to be *Mirandized* prior to her statements.

95. *Tyler* controls resolution of the four-factor analysis here.

96. First, this Defendant—like Hillary Tyler—voluntarily accompanied law enforcement officers to the site of the interview. The facts here are comparable to *Tyler*: in both cases, police offered to drive the Defendant to the interview location in a police vehicle and the Defendant agreed. Here, the Defendant said "no problem" twice. Also, in both cases, the Defendants were transported without handcuffs or physical restraint. This factor weighs against custody, just as it did in *Tyler,* 867 N.W.2d at 172–73.

97. Second, this Defendant—again like Hillary Tyler—was brought to an interview room but not restrained or handcuffed. And while both interviews were lengthy, this Defendant and Tyler were both offered multiple opportunities to eat food, drink a beverage, or use the restroom. This Defendant also had his cell phone, which he was able to use at any time he wished. He did so during some of the breaks, when he used the phone without interference or restriction by law enforcement. On one break, the Defendant ate food uninterrupted for a substantial period of time. The interview was also generally conducted in a conversational, non-confrontational way. Although the officers did occasionally ask difficult questions, that inheres in the nature of a homicide investigation. As in *Tyler*, this factor weighs against custody. 867 N.W.2d at 173.

98. Third, just like in the *Tyler* investigation, this interview took place in the early stages of evaluating the Defendant as a suspect. Police did not confront this Defendant or Hillary Tyler with specific evidence of guilt because they did not have any significant evidence in either case. (The forensic evidence that would later definitively link this Defendant to the murder—including Mollie's blood in his trunk—would not be tested by the Crime Lab for months.) Most of the interview concerned general questions, although the officers did ask the Defendant whether certain evidence might be found when they complete the search of the vehicles. This is again comparable to *Tyler*, where officers asked the Defendant whether certain evidence would be found

during the autopsy. 867 N.W.2d at 173. Like in *Tyler*, this factor weighs against custody, as officers had little to no evidence with which to confront the Defendant. *Id.*

99. Fourth, much like in *Tyler*, the Defendant here was free to go. In both cases, officers reminded the Defendants at the start of the interview that they were free to go at any time. 867 N.W.2d at 174. In both cases, the doors were unlocked, and the Defendants had unobstructed paths to leave the building. *Id.* As the Supreme Court has recognized, "The most obvious and effective means of demonstrating that a suspect has not been taken into custody or otherwise deprived of freedom of action is for the police to inform the suspect that an arrest is not being made and that the suspect may terminate the interview at will." *State v. Miranda*, 672 N.W.2d 753, 760 (Iowa 2003) (internal quotation marks omitted). Both Hillary Tyler and this Defendant were told they were free to leave, and this weighs heavily against custody. 867 N.W.2d at 174.

100. The Defendant was free to go throughout the interview until approximately 11:30 p.m., when federal authorities placed an immigration detainer on him. At that point, the Defendant was in custody and Officer Romero attempted to read *Miranda* warnings to the Defendant.

Although Officer Romero made a good-faith attempt to Mirandize *the Defendant at the Sheriff's Office, she inadvertently left out one of the warnings.*

101. At approximately 11:30 p.m., Officer Romero read the Defendant a series of warnings that she intended to fully comply with *Miranda*.

102. She told the Defendant that he had the right to remain silent or not to talk to the police; that he had the right to an attorney; and that if he could not afford an attorney, one would be appointed for him by the State.

103. Then she asked the Defendant if he wanted to continue speaking with her, despite the warnings. The Defendant responded in the affirmative.

104. Unfortunately, Officer Romero's warnings did not include notification that anything the Defendant said could be used against him in a court of law.

105. Such a notification is a required component of the warnings. *Miranda v. Arizona*, 384 U.S. 436, 469 (1966) ("The warning of the right to remain silent must be

accompanied by the explanation that anything said can and will be used against the individual in court."); *see* Wayne R. LaFave, *Content [of* Miranda *Warnings],* § 2 Crim. Proc. § 6.8(a) (4th ed.) (noting warnings are "deficient" absent notification about use of statements, collecting cases).

106. The failure to give a warning that notifies a suspect that his statements can be used against him renders the warnings ineffective and requires subsequent statements be suppressed. *Miranda*, 384 U.S. at 479 (no statements obtained following custodial interrogation without adequate warnings may be admitted at trial); *United States v. Street*, 472 F.3d 1298, 1312 (11th Cir. 2006) (absence of warning that statements could be used against Defendant at trial rendered *Miranda* warnings invalid, required suppression of statements); *State v. Webster*, 834 N.W.2d 283, 288–89 (2013 N.D.) (same); *Com. v. Dagraca*, 854 N.E.2d 1249, 1254 (Mass. 2006) (same).

107. As a result, this Court likely must suppress the statements obtained following the inadvertently incomplete *Miranda* warning at approximately 11:30 p.m.

108. However, complete *Miranda* warnings were given at a later time, in the vehicle near where Mollie Tibbetts's body was found. (This issue will be discussed in more detail later in this resistance.)

The interview was voluntary, and the confession was not the product of coercive police activity.

109. The Defendant also challenges voluntariness, which the Court must address because voluntariness may affect the disposition of physical evidence and the admission of the Defendant's statements following the incomplete warnings, if used to impeach him.

110. The Defendant does not offer much new argument in the voluntariness analysis of his supplemental motion. *See* Defendant' Suppl. Motion to Suppress, ¶¶27–34. The gist of his complaint is that portions of the interview were late at night and he must have been tired. *Id.* at ¶30.

111. The proper analysis for the voluntariness of the statements, as set forth in the State's initial resistance, looks to the totality of the circumstances. *See* Resistance to Motion to Suppress, pp. 14–17.

112. As a threshold matter, "[C]oercive police activity is a necessary predicate to the finding that a confession is not 'voluntary' within the meaning of the Due Process Clause of the Fourteenth Amendment." *Colorado v. Connelly*, 479 U.S. 157, 167 (1986); *accord State v. Vincik*, 398 N.W.2d 788, 790 (Iowa 1987); *State v. Anfinson*, No. 00-0511, 2002 WL 1426588, at *4 (Iowa Ct. App. July 3, 2002).

113. In evaluating voluntariness, courts are forbidden from conducting "sweeping inquiries into the state of mind of a criminal Defendant who has confessed," and instead must undertake "an objective assessment of police behavior." *Oursbourn v. State*, 259 S.W.3d 159, 171 (Tex. Crim. App. 2008) (citing *Connelly*, 479 U.S. at 167).

114. The purpose of the constitutional voluntariness requirement is to act as a bulwark against acts that "are so offensive to a civilized system of justice that they must be condemned." *Miller v. Fenton*, 474 U.S. 104, 109 (1985).

115. Exclusion of a confession on voluntariness grounds is only required in the most extreme of circumstances—essentially where police misconduct amounts to torture. *See, e.g.*, *Beecher v. Alabama*, 389 U.S. 35 (1967) (holding a gun to the head of a wounded suspect to extract a confession); *Davis v. North Carolina*, 384 U.S. 737 (1966) (a sixteen-day incommunicado interrogation with limited food, conducted in a small, windowless cell); *Reck v. Pate*, 367 U.S. 433 (1961) (Defendant held for four days, deprived of water and medical attention unless he confessed).

116. The facts here are a far cry from those few cases where a court has found a confession involuntary.

117. Although the totality of the circumstances can embrace any fact or circumstance bearing on voluntariness, the Iowa Supreme Court has identified a list of ten or so factors as particularly relevant. *See State v. Payton*, 481 N.W.2d 325, 328–29 (Iowa 1992); *see also Vincik*, 398 N.W.2d at 790. Nearly all of those factors are neutral or weigh in favor of voluntariness here:

a. Age. The Defendant was 24 years old.
b. Education and work experience. The Defendant had some formal education and held successful employment in the United States for several years.

c. Prior experience with the criminal justice system. The Defendant had interacted with Deputy Kivi just days before the interview and was able to appropriately interact and understand the nature of a police officer's role in investigating crime.

d. Whether the Defendant was intoxicated or under the influence. There is no evidence the Defendant was intoxicated or under the influence.

e. Whether *Miranda* warnings were given. *Miranda* warnings were given in Spanish, the Defendant's native language. While the warnings given at approximately 11:30 p.m. were incomplete, this still weighs in favor of voluntariness because the Defendant would have halted the interview at that point if he was being coerced.

f. Whether the Defendant was "mentally subnormal." There is no evidence the Defendant is mentally subnormal. To the contrary, his vocabulary and ability to communicate indicate average or above average intelligence.

g. Whether deception was used. Officers did not deceive the Defendant. At times, they asked hypothetical questions about evidence that they believed *could* be found. When describing the limited evidence in their possession, officers were conservative with their descriptions—for example, telling the Defendant that they found hair in his trunk (which was in fact true).

h. Whether the Defendant showed an ability to understand the questions and respond. At all times, the Defendant appropriately tracked and responded to questions. All pertinent questions were asked in the Defendant's native language, either by Officers Romero or Fink (who speak Spanish) or with Romero acting as an interpreter for an English-speaking officer.

i. The length of time the Defendant was detained and interrogated. While the Defendant spent more than 11 hours at the Sheriff's Office, he was free to go—not in custody—until approximately 11:30 p.m. He was thus interviewed while in custody less than six hours. The total interview length

was approximately 11 hours, with 10 breaks—for food, water, and the restroom.

j. The Defendant's physical and emotional reaction to the interrogation. The Defendant appears to be physically fit. His emotional demeanor and affect are appropriate throughout the interview.

k. Whether physical punishment, including deprivation of food and sleep, was used. No physical punishment was used. The Defendant never asked to stop the interview so he could rest. Food and beverages were provided to the Defendant and he ate a meal uninterrupted for nearly 30 minutes.

118. The Defendant seizes on a few different facts in his motion, but none overpower the factors favoring voluntariness. For example, the Defendant complains about a conversation concerning an "attorney," but this does not affect the voluntariness of the statements. Defendant's Motion to Suppress, ¶60.

a. The specific statement at issue involves a manager at Yarrabee Farms calling the farm's lawyer, and interpreters informed the Defendant that this attorney was being called, even though "[y]ou [the Defendant] don't need it." Defendant's Motion to Suppress, ¶59.

b. As addressed in the State's initial resistance, no comments regarding an "attorney" suggest the Defendant's statements were not voluntary. *See Parsons v. Brewer*, 202 N.W.2d 49 (Iowa 1972) (statement, "You don't need a lawyer. I want to know what happened. That's the only way I can help you," did not remember confession involuntary).

c. Moreover, the Defendant never requested a lawyer; that the farm owner mentioned involving his lawyer does not affect the Defendant. *Cf. Moran v. Burbine*, 475 U.S. 412, 425–26 (1986) (the right to counsel is personal and cannot be invoked by others, including an attorney).

119. In his supplemental motion, the Defendant also implies that the Court should find this was a false confession. Defendant' Suppl. Motion to Suppress, ¶¶31–33. The Court can be confident the confession here is not false: the Defendant led police

directly to Mollie's body at the conclusion of the interview, he was seen in proximity to Mollie while she was running on the last night of her life, and Mollie's blood was found in the trunk of the Defendant's car. All of these facts are extrinsic to the interview and independently establish the Defendant was the killer, not a false confessor.

120. There is no reason to think, as the Defendant suggests, that the Defendant's admissions were the "result of coercive and suggestive questioning." Defendant's Suppl. Motion to Suppress, ¶34. The Defendant's admissions are entirely consistent with the physical evidence and followed generally open-ended, non-confrontational prompts from investigators.

121. As to the alleged instances of promissory leniency, the police are allowed to tell suspects that officers will inform prosecutors that the suspect is cooperative. *See State v. Whitsel*, 339 N.W.2d 149, 153 (Iowa 1983). Officers may also encourage Defendants to tell the truth. *State v. McCoy*, 692 N.W.2d 6, 27–28 (Iowa 2005). None of the officers' statements crossed the line between permissible and impermissible encouragement to cooperate or tell the truth. *See* State's Resistance to Motion to Suppress, pp. 17–20.

The Defendant has not offered any argument to believe the Iowa Constitution provides him relief independent of the federal Constitution.

122. As with his first motion to suppress, the Defendant again quotes portions of the Iowa Constitution, with no explanation of why he believes they warrant this Court granting him relief. Defendant's Suppl. Motion to Suppress, ¶¶35–39.

123. This argument is no argument at all.

124. Any claim under the Iowa Constitution is waived.

The Defendant's complaints about the Vienna Convention on Consular Relations are purely academic. The Defendant is not entitled to any relief.

125. Next, the Defendant devotes eight pages of his supplemental motion to complaints about the Vienna Convention on Consular Relations. Defendant's Suppl. Motion to Suppress, ¶¶43–60.

126. This issue is purely academic. A criminal Defendant is not owed any remedy for a violation of the Convention. *See Sanchez-Llamas v. Oregon*, 548 U.S. 331,

350 (2006) ("[N]either the Vienna Convention itself nor our precedents applying the exclusionary rule support suppression of [the Defendant's] statements to police."); *State v. Buenaventura*, 660 N.W.2d 38, 46 (Iowa 2003) ("[I]n the absence of any provision in the treaty itself for suppression of evidence obtained in violation of its provisions, we refuse to create such a remedy.").

127. Nor is anything related to the Convention dipositive on the voluntariness analysis. *See Buenaventura*, 660 N.W.2d at 46 ("[E]ven assuming [the Defendant's] rights under the Vienna Convention were violated, that singular fact would not necessarily render his statements to the police involuntary.").

128. The Vienna Convention has little if any impact on this case.

There was no violation of section 804.20 here. But even if there was, the only available remedy is exclusion of the breath-test in an OWI investigation, which does not apply to this case.

129. In the supplemental motion to suppress, the Defendant block-quotes from Iowa Code section 804.20, then block-quotes portions of the interview transcript. Defendant's Suppl. Motion to Suppress, ¶¶9–15. The Defendant does not articulate any argument explaining why he believes there is an issue related to Iowa Code section 804.20 in this case, nor does he ask for any relief specific to section 804.20. Defendant's Suppl. Motion to Suppress, ¶¶9–15.

130. Section 804.20 does not provide any basis for the Defendant to obtain relief here.

131. The only remedy Iowa courts have ever recognized for a violation of Iowa Code section 804.20 is the suppression of breath-test evidence. *See, e.g.*, *State v. Hellstern*, 856 N.W.2d 355, 365 (Iowa 2014); *State v. Walker*, 804 N.W.2d 284, 296 (Iowa 2011). There is no breath test to suppress here. Nor does the Defendant ask for any different remedy in his motion. This can end the inquiry.

132. But even if there were some remedy available to the Defendant for a violation of section 804.20, the statute was not violated here. The Defendant spoke with federal immigration officials by phone at approximately 11:30 p.m. Officers explained that the Defendant would be held on an immigration detainer at that time,

and the Defendant asked when he was going to be "able to talk to somebody to let them know" that he had been detained. This was not a request to consult with a family member or friend in the present, but rather was a question seeking to determine when he would have phone access once detained for immigration violations. The Defendant did not "invoke" his rights under the statute, given these facts. *See State v. Bowers*, 661 N.W.2d 536, 542 (Iowa 2003) (noting 804.20 evaluation turns on "the context of the situation").

133. Finally, even if this Court does find the Defendant seeks a remedy other than breath-test suppression, and does find a violation of section 804.20, suppressing the Defendant's statements is not warranted. Iowa courts have never suppressed a confession solely resulting from an 804.20 violation. *State v. Bowers*, 661 N.W.2d 536, 541 (Iowa 2003). And there is no reason to think physical evidence like Mollie's body—which is not suppressed following a *Miranda* or Consular Rights violation—would be suppressed for violation of a state code provision.

134. To the extent dicta in any case law leads to an opposite conclusion, that dicta is not binding. The plain language of section 804.20 does not afford any remedy to criminal Defendants for a violation: it instead renders police officers criminally liable. It is doubtful whether 804.20 violations should require the suppression of any evidence in the first place (though the State recognizes the breath-test cases are binding on a trial court). The 804.20 case law certainly should not be expanded to encompass the statements or physical evidence at issue here.

If this Court finds a Miranda *violation, the physical evidence seized following the interview—including Mollie's body—is still admissible.*

135. Even if this Court finds that the 11:30 p.m. *Miranda* warnings were incomplete, the Defendant is not entitled to suppression of any physical evidence.

136. All evidence from the trunk of the black Malibu is admissible because the seizures pre-date any admissions from the Defendant and are not the product of any admissions.

137. All evidence from Mollie's body, including the body itself and the forensic results of the autopsy, is admissible because physical evidence obtained following a

Miranda violation is not fruit of the poisonous tree. *United States v. Patane*, 542 U.S. 630, 643 (2004).

138. In *Patane*, the police arrested the Defendant and questioned him, but did not provide complete *Miranda* warnings—the officer "got no further than the right to remain silent." *Patane*, 542 U.S. at 635. The police then asked the Defendant about the location of a Glock pistol. *Id.* The Defendant, after some hesitation, told police that the Glock was in his bedroom. *Id.* The Glock was seized and the subject of a motion to suppress. *Id.* The United States Supreme Court held that the Glock was admissible at trial because incomplete *Miranda* warnings do not require the suppression of physical fruits that follow un-warned or incompletely-warned statements. *Id.* at 643–44. All that is required is that the statements are voluntary, i.e., not the product of coercive police activity. *Id.*

139. Pursuant to *Patane*, Mollie's body and the resulting forensics are admissible because the Defendant's statements were constitutionally voluntary and not the product of coercive police activity.

140. Moreover, the Defendant's incompletely-warned statements may also be admissible to impeach the Defendant, should he testify at trial. *Harris v. New York*, 401 U.S. 222, 226 (1971).

141. Similarly, the State may admit the testimony of any witnesses who were questioned or discovered as a result of the incompletely-warned statements. *Michigan v. Tucker*, 417 U.S. 433, 446 (1974).

Statements following the second Miranda *warnings, given at approximately 5:50 a.m., are admissible as substantive evidence.*

142. After the Defendant led law enforcement officers to Mollie's body, he continued to speak with Officer Romero. Officer Romero provided a second set of *Miranda* warnings to the Defendant—and this time, she provided a complete warning. All statements made following this second set of *Miranda* warnings are admissible in the State's case-in-chief, as explained below.

143. The general rule established by controlling case law is that, although a *Miranda* violation may render custodial statements inadmissible, the violation can be

cured by a subsequent full warning, and statements that follow the subsequent warning are admissible so long as they are constitutionally voluntary. *Oregon v. Elstad*, 470 U.S. 298, 306–17 (1985). As it relates to the facts, the *Elstad* Court found that, even though police violated *Miranda* by initially questioning the Defendant without warnings, a confession that followed adequate *Miranda* warnings at the stationhouse was admissible against the Defendant because it was not coerced. *See id.*

144. Applying *Elstad* to this case, the Defendant's statements that follow the adequate *Miranda* warnings in the field at approximately 5:50 a.m. are admissible because they are constitutionally voluntary, i.e., not the product of coercive police activity. *See Connelly*, 479 U.S. at 167 (on voluntariness meaning coercive police activity); *Elstad*, 470 U.S. at 315–17 (on the *Miranda* issue).

145. Although the Defendant does not raise this issue in his motion or the supplement, there is one limited exception to the *Elstad* rule, which is discussed in *Missouri v. Seibert*, 542 U.S. 600 (2004). That exception does not apply here.

146. The controlling opinion[1] in *Seibert* holds that *Elstad* does not apply to "a two-step questioning technique based on a deliberate violation of *Miranda*." *Id.* at 620 (Kennedy, J.). *Elstad* remains good law under circumstances that involve police mistakes, negligence, or accident. *See id.* at 619–20.

147. There was no deliberate violation of *Miranda* here. Officer Romero will testify credibly that she did her best to fully *Mirandize* the Defendant at 11:30 at the

[1] The *Seibert* Court divided 4–1–4. *See generally* 542 U.S. 600. When the Supreme Court divides in this fashion, "the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds." *Marks v. United States*, 430 U.S. 188, 193 (1977) (citation and internal quotation mark omitted). Applying this rule, the narrowest opinion in *Seibert* was the concurrence by Justice Kennedy, so that is the opinion that controls. *See Seibert*, 542 U.S. at 617 (Kennedy concurring in the judgment on what he termed "narrower" grounds).

Many other courts have had to resolve the question of which opinion in *Seibert* controls, and the decisions of both state and federal courts overwhelmingly hold that Justice Kennedy's concurrence is the controlling opinion. *Kuhne v. Commonwealth*, 733 S.E.2d 667, 672 n.5 & n.6 (Va. Ct. App. 2012) (collecting approximately 20 cases finding Justice Kennedy's *Seibert* opinion controls).

Sheriff's Office, but that she made one mistake when providing the rights to him extemporaneously. Although Officer Romero did not realize at the time that her earlier *Miranda* warnings were incomplete, she *Mirandized* the Defendant a second time in a vehicle near where Mollie's body was found.

148. Officer Romero will testify credibly that she provided the second set of warnings because there had been a break in the interview and they had moved to a second location. Following the warnings, the questions Romero asked the Defendant generally related to gathering additional information beyond what the Defendant had previously told her, in light of recovering Mollie's body. The Defendant's statements were somewhat similar to his earlier admissions, but he steadfastly denied recalling any specific information about how Mollie was killed.

149. This case does not involve the kind of deliberate police misconduct that was at issue in *Seibert*—it involves a mistake by an officer who was doing her best to give Spanish-language *Miranda* warnings as soon as she believed the Defendant was in custody.

150. Moreover, the behavior of the officers here is incompatible with any nefarious interview tactic. If officers had intended to obtain an unwarned statement at the Sheriff's Office, they would have provided no warnings—not attempted to provide full warnings, only to miss a sentence. The very act of giving warnings (complete or otherwise) cannot be reconciled with a claim that police intended to not warn the Defendant.

Mollie's blood (found in the trunk of the black Malibu) is admissible, no matter how the Court resolves the consent, Miranda, *or voluntariness issues. Police also searched the Malibu pursuant to a warrant and the blood was not derived from the Defendant's confession.*

151. Regardless of how the Court addresses the consent, *Miranda* and voluntariness issues, Mollie's blood (found in the Defendant's trunk) will be admissible at trial.

152. As to the consent issue, the State maintains the consent was valid for the reasons expressed earlier in this resistance. But even if this Court disagrees,

suppression is not appropriate because police also obtained a search warrant for the Malibu, demonstrating that the blood would have been inevitably discovered through an independent source.

153. As a general principle, "If the evidence in question was obtained from a source independent of the primary illegality, it is not subject to exclusion as tainted fruit." *State v. Hamilton*, 335 N.W.2d 154, 158 (Iowa 1983) (citing *Silverthorne Lumber Co. v. United States*, 251 U.S. 385 (1920)); *accord Murray v. United States*, 487 U.S. 533, 539, (1988).

154. The Iowa Supreme Court has recognized that, while the State bears the overall burden of persuasion, the Defendant "must, in the first instance, go forward with specific evidence of a nexus between the illegality and the evidence, in order to raise the issue." *Hamilton*, 335 N.W.2d 158 (also collecting cases). The Defendant cannot do so here. And even if the Defendant had made such an argument, it fails because a subsequent search was conducted pursuant to an untainted warrant.

155. On August 20, 2018, (the same day officers interviewed the Defendant), DCI Agent Trent Vileta applied for and obtained a search warrant for the Defendant's black Malibu.

156. The basis for the search warrant is unrelated to any statements made by the Defendant after he was taken into custody pursuant to the immigration detainer at approximately 11:30 p.m. Instead, the accompanying affidavit sets forth the facts surrounding Mollie's disappearance, that the black Malibu was "going back and forth" in the area where Mollie was running, that Deputy Kivi had linked the black Malibu to the Defendant during a consensual encounter, and that (during the non-custodial portions of the interview) the Defendant had admitted to seeing Mollie near the time of her disappearance. This evidence gives rise to a fair probability that the Defendant was involved in Mollie's disappearance, supplying probable cause to support a search.

157. Both the United States and Iowa Supreme Courts have "specifically held that the government may reseize evidence previously seized illegally when the later seizure is pursuant to a warrant issued on facts and for reasons independent of the

initial illegality." *State v. Seager*, 571 N.W.2d 204, 211 (Iowa 1997) (citing *Murray v. United States*, 487 U.S. 533, 541–42 (1988)).

158. Like in *Seager*, the magistrate here issued a warrant independent of any allegedly tainted statements obtained after the Defendant was incompletely *Mirandized* at the Sheriff's Office. And while a de novo review of the search warrant for probable cause would lead to the conclusion that the warrant was properly issued, the standard of review is more deferential than that: "[W]hen police obtain a warrant, [the courts] do not strictly scrutinize the sufficiency of the underlying affidavit." *State v. McNeal*, 867 N.W.2d 91, 100 (Iowa 2015). Instead, this Court must "draw all reasonable inferences to support the judge's finding of probable cause" and "give great deference to the judge [or magistrate]'s finding." *State v. Gogg*, 561 N.W.2d 360, 364 (Iowa 1997). "Close cases are decided in favor of upholding the validity of the warrant." *Id.*

159. This Court's deferential review of the warrant requires the finding that, even if the consent to search the car was invalid, Mollie's blood in the trunk would still be admissible because it was obtained by a warranted search, independent of any taint.

160. Irrespective of any arguably trained admissions by the Defendant, the State Crime Lab would have conducted its investigation and found Mollie's blood in the Defendant's trunk.

161. Mollie's blood from the trunk cannot be suppressed.

Even if this Court rejects every other argument put forward by the State, Mollie's body would have been inevitably discovered.

162. Even if this Court, contrary to the case law, found the Defendant's statements to all be the product of *Miranda* violations and coercive police activity, Mollie's body would still be admissible because it would have been inevitably discovered during the course of the police and DCI investigation.

163. "Exclusion of physical evidence that would inevitably have been discovered adds nothing to either the integrity or fairness of a criminal trial." *Nix v. Williams*, 467 U.S. 431, 446 (1984).

164. For this reason, even if statements made by a Defendant were involuntary, the physical evidence is admissible when the State can prove "the evidence

in question would inevitably have been discovered without reference to the police error or misconduct." *Id.* at 448.

165. *Nix* is the cornerstone case. There, the Iowa Bureau of Investigation had recovered a body due to an illegally obtained confession, but the State maintained the body would have been inevitably discovered because it was found in the path of a volunteer search party working a grid at the direction of Iowa police. *See Williams*, 467 U.S. at 448–50. Three courts, including the United States Supreme Court and the Iowa Supreme Court, agreed with the State and concluded that the search parties would have inevitably discovered the body—even though it was initially discovered due to a tainted confession. *See id.* at 449–50; *State v. Williams*, 285 N.W.2d 248, 258 (Iowa 1979) (adopting the inevitable-discovery rule before the United States Supreme Court).

166. The State does not need to prove inevitable discovery beyond a reasonable doubt. *See Williams*, 467 U.S. at 444 n.5. Instead, the State's burden is by a preponderance of evidence—to prove the evidence probably would have been discovered without the allegedly tainted statements. *See id.*

167. At the suppression hearing, the State will prove by a preponderance of the evidence that Mollie's blood in the trunk and Mollie's body in the cornfield would have been inevitably discovered, even without any statements made by the Defendant.

168. Mollie's body was located in an open farm field. Inevitably, whether at harvest or before, the field would have been emptied of crops and Mollie's body would have been visible to the naked eye of farmers and passersby.

169. At the time of the interview, local, state, and federal law enforcement were conducting extended searches throughout Poweshiek County.

170. Law enforcement witnesses will testify credibly at the suppression hearing that they planned to conduct aerial surveys of the entire county—including where Mollie's body was found—at the conclusion of the harvest.

171. Also, multiple farmers had expressed concern to law enforcement that they feared they would come across Mollie's body at some point during harvest. This reflects the community's awareness of Mollie's disappearance and that farmers and

other civilians across the area intended to be on the look-out for any sign of Mollie's remains.

172. Evidence at the suppression hearing will also prove that canvass maps of Poweshiek County were created to ensure the search was completed methodologically and would reach all potential locations. Although the area Mollie's body was found had not yet been searched, it would have been.

173. The ongoing search had involved extended canvasses (including the entire town of Brooklyn), ground searches, and aerial searches of surrounding farm fields by an Iowa State Patrol airplane, a helicopter, and Unmanned Aerial Vehicles ("UAVs") provided by the FBI. These same mechanisms would have been brought to bear on the remaining unsearched areas, including the area where Mollie was eventually found.

174. Although it may have taken slightly longer to find Mollie's body without the Defendant's statements, there is no question Mollie's body would have been found and supplied the same forensic evidence to investigators. The physical findings that are most relevant to cause and manner of death relate to damage to Mollie's bones, rather than soft tissue that could have arguably disappeared during decomposition. In addition, the deformations and lacerations to Mollie's jogging attire would have been in substantially the same condition, even if her body was found later, due to the synthetic nature of the clothing material.

175. All of this evidence would have been inevitably discovered and it cannot be suppressed.

WHEREFORE the State of Iowa requests this Court deny the Defendant's motion to suppress in reference to all statements and evidence, other than the suppression of statements made between 11:30 and 5:50 a.m. from the State's case-in-chief.

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